

ORDINANCE NO. 07-28

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A GROUND LEASE WITH T-MOBILE SOUTH LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO LEASE A SITE LOCATED AT O'QUINN PARK, 6051 WEST 2 AVENUE, HIALEAH, FLORIDA IN ORDER TO CONSTRUCT A WIRELESS COMMUNICATIONS FACILITY ON A 100-FOOT HIGH MONOPOLE TOWER CAMOUFLAGED IN THE SHAPE OF A FLAG POLE FOR A TERM OF FIVE YEARS, BEGINNING FROM THE COMMENCEMENT DATE OF THE LEASE TERM AND ENDING FIVE YEARS THEREAFTER, WITH TWO CONSECUTIVE RENEWAL TERMS OF FIVE YEARS, EACH SUBJECT TO APPROVAL BY THE CITY, FOR A BASE ANNUAL RENT OF \$35,000, WITH AN ANNUAL INCREASE OF 5% EACH YEAR, TOGETHER WITH SUCH RIGHTS AND DUTIES AS MORE FULLY DESCRIBED IN THE GROUND LEASE, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; AND GRANTING A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES IN CONNECTION WITH THE CONSTRUCTION AND OPERATION OF THE COMMUNICATIONS TOWER; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of the City to allow for the use of wireless communication towers on public property and obtain revenue through a ground lease.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into a ground lease with T-Mobile South LLC, a Delaware limited liability company, to lease a site located at O'Quinn Park, 6051 West 2 Avenue, Hialeah, Florida, in order to construct a wireless communication facility on a 100-foot high monopole tower camouflaged in the shape of a flag pole, beginning from the commencement date of the lease term and ending five years thereafter, with two consecutive renewal terms of five years, each subject to approval by the City, for a base annual rent of \$35,000, with an annual increase of 5% each year, together with such rights and duties as more fully described in the ground lease, a copy of which is attached hereto and made a part hereof as Exhibit "1".

Section 2: The City of Hialeah, Florida hereby grants a non-exclusive easement for ingress, egress and utilities in connection with the construction and operation of the communications tower.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty

described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

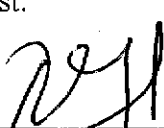
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

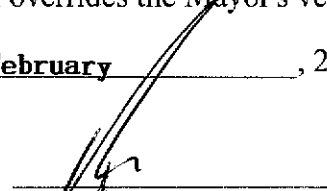
PASSED and ADOPTED this 27th day of February, 2007.

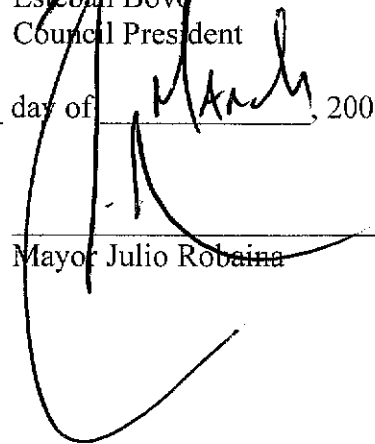
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.

Attest:

Approved on this 1 day of March, 2007.


Rafael E. Granado, City Clerk


Esteban Bovo
Council President


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".